



07-16-03

RCE/3731 #

Attorney's Docket N A31-2047 RE

PATENT

7-23

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

D3
#17

In re application of: Gilbert M. Aust et al.

Serial No.: 09/707,445

Group No.: 3731

Filed: November 6, 2000

Examiner: M. D. Thaler

For: SURGICAL INSTRUMENT

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RECEIVED
JUL 18 2003
TECHNOLOGY CENTER R3700

REQUEST FOR CONTINUED EXAMINATION (RCE)
(37 C.F.R. § 1.114)

1. Applicant hereby requests continued examination, in accordance with 37 C.F.R. § 1.114, for the above-identified application.

WARNING: 35 U.S.C. 132(b) and § 1.114 provide for the continued examination of an application and **not** examination of a continuing application. Accordingly, the Office will not permit an applicant to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined. Notice of March 10, 2000, 65 Fed Reg 14865, at 14868.

WARNING: A continued examination request **cannot** be made if at least one office action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 161 has not been mailed. The provisions of 37 CFR 1.114 also do not apply (1) to a provisional application, an application for a utility or plant patent filed under 35 U.S.C. 111(a); (2) an international application filed under 35 U.S.C. 363 before June 8, 1995; (3) a patent under reexamination or (4) an application for a design patent. 37 CFR 1.114(d).

NOTE: There is no limit to the number of times the fee for continued examination may be submitted. Notice of March 10, 2000, 65 Fed Reg 14865, at 14868.

NOTE: Unlike a continuation application, a continued examination request **can** utilize the mailing procedure of 37 CFR 1.8. See 37 CFR § 1.8(a)(2)(i)(A).

CERTIFICATION UNDER 37 CFR §§1.8(a) and 1.10*
(When using Express Mail, the Express Mail label number is mandatory;
Express Mail certification is optional.)

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

- ☒ deposited with the United States Postal Service in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

37 C.F.R. § 1.8(a)

- ☐ with sufficient postage as first class mail.
Addressee"

37 C.F.R. § 1.10*

- ☒ as "Express Mail Post Office to
Mailing Label No. EU251878328US
(mandatory)

TRANSMISSION

- ☐ transmitted by facsimile to the Patent and Trademark Office, (703)

Signature

Teresa Ragone

(type or print name of person certifying)

Date: July 15, 2003

07/17/2003 RNEBRAHT 00000050 09707445

01 FC:2801
02 FC:2201

375.00 OP
252.00 OP

(Request for Continued Examination (RCE) (37 C.F.R. § 1.114)[9-62]--Page 1 of 5)

TIME REQUEST IS BEING MADE

2. This request is being submitted (check appropriate item(s) below):

- i. ☐ Prior to abandonment of the application
- ii. ☐ Payment of the issue fee
 - ☐ Prior to payment of issue fee
 - ☐ Issue fee has been paid but a petition under § 1.313 has been sent herewith and granted
- iii. ☐ Prior to a decision on appeal to the Board of Patent Appeals & Interferences that this Request for Continued Examination is being filed.

NOTE: If such a notice is not sent to the Board then may refuse to vacate a decision rendered after the filing of the RCE but before recognition by the Office of the RCE request under § 1.114.

- iv. ☐ Appeal to the U.S. Court of Appeals of the Federal Circuit under 35 U.S.C. 145 or ☐ Commencement of a civil action under 35 U.S.C. 146.
 - ☐ Prior to the filing of such appeal or commencement of civil action.
 - ☐ Such appeal or commencement of civil action has been terminated.

ENCLOSURES

3. Enclosed herewith is/are:

WARNING: If reply to a final or non-final Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111. 37 C.F.R. § 1.114(b).

- ☐ An information disclosure (37 C.F.R. § 1.98)
- ☐ Form PTO-1449 and References
- ☒ An amendment
- ☐ New arguments
- ☐ New evidence in support of patentability
- ☐ Other: Preliminary Amendment

FEE REQUEST (37 C.F.R. §1.17(e))

4. This application is on behalf of:

- ☒ Small entity (and status is still as small entity) \$375.00
- ☐ Other than a small entity \$750.00

Continued Prosecution Request Fee **\$375.00**

FEE FOR CLAIMS

NOTE: "The fee for continued examination under § 1.114 (§1.17(e)) does not include additional claims fee (cf. 1.53 (d)(3)(ii))." See Notice of March 10, 2000, 65 Fed Reg 14865, at 148868.

37 CFR 1.53(d)(3): "The filing fee for a continued prosecution application filed under this paragraph is:

(i) The basic filing fee as set forth in § 1.16; and

Any additional § 1.16 fee due based on the number of claims remaining in the application after entry of any amendment accompanying the request for an application under this paragraph and entry of any amendments under § 1.116 unentered in the prior application which applicant has requested to be entered in the continued prosecution application."

5. The fee for claims (37 C.F.R. § 1.16(b)-(d)) has been calculated as shown below:

(Col. 1)		<u>(Col. 2)</u>		(Col. 3)	SMALL ENTITY		OTHER THAN A SMALL ENTITY		
CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PREVIOUSLY PAID FOR		PRESENT EXTRA	RATE	ADDIT. FEE .	OR	RATE	ADDIT. FEE
TOTAL	*9	MINUS	** 20	=0	X\$ 9=	\$		X\$ 18=	\$0
INDEP.	*9	MINUS	***3	=6	X\$ 42=	\$252.00		X\$ 84=	\$0
<input type="checkbox"/>	FIRST PRESENTATION OF MULTIPLE DEP. CLAIMS			=	X\$140=	\$		X\$280=	\$0
							OR	TOTAL ADDIT. FEE	\$252.00

* If the entry in Col. 1 is less than entry in Col. 2, write "0" in Col. 3.

** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 20, enter "20".

*** If the "Highest No. Previously Paid For" IN THIS SPACE is less than 3, enter "3".

The "Highest No. Previously Paid For" (Total or Indep.) is the highest number found in the appropriate box in Col. 1 of a prior amendment or the number of claims originally filed.

WARNING See 37 C.F.R. §1.116.

(complete (c) or (d), as applicable)

(c) ☐ No additional fee for claims is required.

OR

(d) ☒ Total additional fee for claims required \$252.00

EXTENSION OF TIME

(If an extension of time is appropriate complete (a) or (b), as applicable)

6. The proceedings herein are for a patent application, and the provisions of 37 CFR § 1.136(a) apply.

- (a) ☐ Applicant petitions for an extension of time, the fees for which are set out in 37 CFR 1.17(a)(1)-(4), for the total number of months checked below:

Extension for (months)	Fee for Other than Small Entity	Fee for Small Entity
<input type="checkbox"/> one month	\$ 110.00	\$ 55.00
<input type="checkbox"/> two months	\$ 390.00	\$195.00
<input type="checkbox"/> three months	\$ 890.00	\$445.00
<input type="checkbox"/> four months	\$1390.00	\$695.00
	Fee	\$0

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for month has already been secured, and the fee paid therefor of \$0 is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ 0

Or

- (b) ☒ Applicant believes that no extension of term is required. However, this is a conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

TOTAL FEE(S) DUE

WARNING: The fee for continued examination under § 1.114 may not be deferred. 37 C.F.R. § 1.53(f).

7. The total fee(s) due is/are:

Continued Prosecution Fee (§1.17(e))	\$ <u>375.00</u>
Fee(s) for additional claims (if any) (§ 1.16(b)-(d))	\$ <u>252.00</u>
Extension of time fee (if any) (§ 1.17(a)(1)-(4))	\$ <u>0</u>
Total Fee(s) Due	\$ <u>627.00</u>

PAYMENT OF FEE(S) DUE

8. Please pay the fee(s) for this continued examination application as follows:

- ☒ Check is attached for the sum of \$ 627.00
- ☐ Charge Account No. 20-0090 the sum of \$ _____
- ☐ Charge Credit Card the sum of \$ _____
(Credit Card Payment Form (PTO-2038) attached)

Please charge any required additional fee(s) for § 1.17(e), § 1.16(b)-(d) and/or § 1.17(a)(1)-(4) to

- ☒ Account No. 20-0090.
- ☐ Credit Card (Credit Card Payment Form (PTO-2038) attached).

INVENTORSHIP

NOTE: Any change of inventors must be via the procedure set forth in 37 CFR § 1.48. See Notice of March 10, 2000, 65 Fed Reg 14865, at 14868.

9. This application as amended names as inventors:

- ☒ the same inventors as previously designated for the claims.
- ☐ fewer than the inventors previously designated and a statement accompanies this request for the deletion of the name or names of the person or persons who are not inventors of the invention now being claimed.
- ☐ a person not named previously as an inventor and a petition under 37 C.F.R. § 1.48 is/has separately: ☐ being filed ☐ been filed

Date: July 15, 2003


SIGNATURE OF PRACTITIONER

Reg. No. 20,177

Thomas L. Tarolli

(type or print name of practitioner)

Tel. No. (216) 621-2234

Tarolli, Sundheim, Covell, & Tummio L.L.P.

526 Superior Avenue, Suite 1111

P.O. (Correspondence) Address

Customer No.: 26294

Cleveland, OH 44114-1400